

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
DELTA DIVISION

TOMMY MCNARY, JR.

PLAINTIFF

v.

No. 2:96CV171-D-B

CLARKSDALE PUBLIC SCHOOLS

DEFENDANT

OPINION

Presently this cause comes before the court on Defendant's "Motion for Attorney's Fees." Upon duly considering the aforesaid motion, the court finds that this motion should be denied.

I. Factual and Procedural Background

Plaintiff McNary was hired to be a janitor with the Clarksdale Public Schools for the 1995-96 school year. In a matter unrelated to his employment, McNary was arrested for raping a female. Sometime after the arrest, McNary was fired. After being denied appointment of counsel, Plaintiff McNary proceeded pro se in filing a claim for employment discrimination on the basis of sex, under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5, et seq. McNary asserted that he was "discharged as a result of being accused of a sex crime by a female," and that he was "discriminated against and was discharged because of [his] sex, male." Defendant Clarksdale Public Schools averred he was fired for "disorderly conduct." Ultimately, this court dismissed the case for failure to state a claim upon which relief could be granted. Plaintiff McNary appealed the dismissal to the United States Court of Appeals for the Fifth Circuit, and the Fifth Circuit dismissed his appeal with prejudice. The Defendant is now seeking payment of attorney's fees pursuant to 42 U.S.C. § 2000e-5.

II. Discussion

Prevailing defendants under Title VII are entitled to attorney fees only when a plaintiff's underlying claim is "frivolous, unreasonable, or without foundation even though not brought in subjective bad faith." Christiansburg Garment Co. v. EEOC, 434 U.S. 412, 421, 98 S. Ct. 694, 700, 54 L. Ed. 2d 648 (1978). Frivolity is determined by questioning whether the case was so lacking in merit that it was groundless, rather than whether the claim was ultimately successful. Jones v. Texas Tech. Univ., 656 F.2d 1137, 1145 (5th Cir. 1981). In making such determination, the following factors are considered: (1) whether the plaintiff established a prima facie case, (2) whether the defendant offered to settle, and (3) whether the district court dismissed the case or held a full-blown trial. United States v. Mississippi, 921 F.2d 604, 609 (5th Cir. 1991). See also, EEOC v. Kimbrough Inv. Co., 703 F.2d 98, 103 (5th Cir. 1983). However, the limitations placed on awarding attorney's fees in Christiansburg should be applied with special force when an action is undertaken by uncounseled plaintiffs. Hughes v. Rowe, 449 U.S. 5, 15, 101 S. Ct. 173, 179, 66 L. Ed. 2d 163 (1980).

In this case, the lawsuit was initiated by plaintiff without legal counsel. The complaint asserted that Plaintiff McNary was fired from his job as janitor at Clarksdale Public Schools because he had been arrested on rape charges. These charges against McNary were later dropped. Such facts are not a basis for a sexual discrimination employment claim. McNary's claim was without merit on its face and due to its untimeliness. Still, this court appreciates that a layperson could interpret these facts as a wrong for which the courts could make right. "An unrepresented litigant should not be punished for his failure to recognize subtle factual or legal deficiencies in his claims." Hughes, 449 U.S. at 15. Accordingly, the court denies the

Defendant's motion for attorney's fees. A separate order in accordance with this opinion shall issue this day.

THIS the ____ day of October 1998.

United States District Judge

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ORDER DISMISSING MOTION FOR ATTORNEY'S FEES

Pursuant to a memorandum opinion issued this day, it is hereby ORDERED that
the Defendant's "Motion for Attorney's Fees" is DENIED.

SO ORDERED, this the _____ day of October 1998.

United States District Judge